

REQUEST FOR RECONSIDERATION

Claims 1-20 remain active in this application.

The claimed invention is directed to a hair cleansing composition comprising an alkyl ether sulfate surfactant comprising 30-45 wt.% of the sulfate of formula I wherein  $n=0$ , 18-27 wt.% of the sulfate wherein  $n=1$ , and 10-20 wt.% of the sulfate wherein  $n=2$ , the balance wherein  $n$  is 3 or greater and the sum of sulfates wherein  $n=0-2$  is 70 wt.% or greater. Applicants have discovered that such a distribution of alkyl ether sulfate surfactants provides for good foaming properties in a hair cleansing composition. Such a hair cleansing composition is nowhere disclosed or suggested in the cited references of record.

The rejection of claims 1-3, 5-16 and 18 under 35 U.S.C. §102(b) over Flick as evidenced by Orion Chimique is respectfully traversed.

Applicants are unable to find any reliance by the examiner to Orion Chimique in the office action. This reference is not cited on the PTO-892 form. A copy of this reference does not appear to be available on the USPTO PAIR image file wrapper. Accordingly, the failure to rely on this reference should render moot the absence of the reference from the record. None the less, should the examiner maintain the rejection in view of Orion Chimique the examiner is respectfully requested to provide a copy of such reference and to properly cite same on a PTO-892 form.

None of the cited references disclose or suggest an alkyl ether sulfate surfactant having a sulfate distribution as claimed.

Flick is cited for a disclosure of a shampoo composition containing Standapol ES-1, a sodium laureth sulfate surfactant. There is no disclosure in Flick et al. of the alkyl ether sulfate distribution of Standapol ES-1.

The Examiner relies upon the Brief submitted to the European Patent Office by Cognis GmbH on April 30, 2008 as evidence that the distribution of sulfates in ES-1 is

35.43% n=0, 21.88% n=1 and 15.49% n=2, the remaining portion, up to 100 wt.% being formed by fatty alcohol ether sulfates with 3 or more parts of ethylene oxide. The evidence provided in the Cognis opposition notes that prior to 1999, Standapol ES-1 was produced by Henkel KGaA and that today is produced by Cognis GmbH.

Cognis provided the Declaration of Mr. Hans-Peter Mueller stating that the manufacturing method for producing Standapol ES-1 has **not changed since 1997**. Mr. Mueller's Declaration states that for the period **from January 1, 1997** until February 29, 2008, he was responsible for sulfation plants and the production of anionic surfactants and the product Standapol ES-1 came under this responsibility. Due to his responsibility for the production he became aware of the manufacturing instructions for the product Standapol ES-1 and that from the period of 1997 until 2002 he personally visited the plants for the production of Standapol ES-1. Thus, **at best** Mr. Mueller's declaration could attest to the composition of Standapol ES-1 from January 1, 1997 until February 29, 2008. Mr. Mueller's declaration provides no relevant evidence as to the composition of Standapol ES-1 **prior to January 1, 1997**.

Applicants note that Flick was copyrighted in 1989 and accordingly the issue is the composition of Standapol ES-1 in 1989. However, there is no evidence as to the composition of Standapol ES-1 as of 1989. Since there is no evidence as to the composition of Standapol ES-1 as of 1989 the claimed invention is clearly not anticipated nor rendered obvious from this reference.

Applicants note that the relationship between a trademark and the product it identifies is sometimes indefinite, uncertain and arbitrary. The formula or characteristics of the product **may change from time to time** and yet it may continue to be sold under the same trademark. In patent specifications, every element or ingredient of the product should be set forth in positive, exact, intelligible language, so that there will be no uncertainty as to what is meant. Arbitrary trademarks which are liable to mean different things at the pleasure of manufacturers do not constitute such language *Ex parte Kattwinkel*, 12 USPQ 11 (Bd. App. 1931) M.P.E.P. §608.01(v). emphasis added

Thus, the mere identification of a trademark composition in 1989 coupled with an assertion as to the composition in 1997 is insufficient to anticipate the claimed invention and accordingly withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

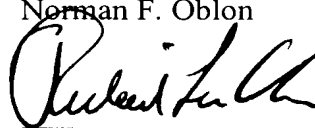
The remaining rejections of claims 4 and 17 under 35 U.S.C. §103(a) over Flick in further view of Bartz, U.S. 5,714,446 and of claims 19-20 under 35 U.S.C. §103(a) over Flick are respectfully traversed.

As discussed above, Flick fails to disclose or suggest an alkyl ether sulfate having an ethoxylation distribution as claimed. These deficiencies are not cured by Bartz which has merely been cited for a disclosure of a nonionic silicone conditioning agent. As the combined disclosures of the references fail to disclose or suggest an alkyl ether sulfate having an ethoxylation distribution as claimed, the claimed invention is not rendered obvious by these references and accordingly withdrawal of the rejections under 35 U.S.C. §103(a) is respectfully requested.

Applicants submit that this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon



---

Richard L. Chinn, Ph.D.  
Attorney of Record  
Registration No. 34,305

Customer Number  
**22850**  
Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)  
RLC/rac